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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,076	02/03/2004	Joseph M. Asher	075234.0103	1945
5073	7590	07/14/2005	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			HSU, RYAN	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/771,076

Applicant(s)

ASHER ET AL.

Examiner

Ryan Hsu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☒ Claim(s) 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 45 is objected to because of the following informalities: Claim 45 fails to meet the requirement to formulate the claim in 'a single sentence' format as noted in MPEP 608.01(m)[R-2] and 37 CFR 1.75(i). See also *Fressola v. Manbeck*, 36 USPQ2d 1211 (D.D.C. 1995).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-22 and 45-53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims merely involve the manipulation of an abstract idea 'determining an amount of a total payout' and/or 'determining an amount to be paid'. There is no practical application of this abstract idea claimed. Thus the claims do not meet the requirements for statutory subject matter under 35 U.S.C. 101.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-12, 14-17, 22-34, 36-39, 44-49, and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Brenner et al. (USPN 6,554,708 B1).**

With regard to claims 1, 23, 45 and 53, Brenner discloses an interactive wagering system that can manage bets and monitor and process the information provided by the users to the system. Specifically, the term “bet” inherently includes the process of an agreement between two parties on a contest or contingent issue. Brenner’s device interactive system allows for the user to select from a variety of wager types a selection of a first number of events selected from a group of events; a selection of a respective participant for each of the first number of events selected (*ie: the wagered winner*), and an bet amount (*see col. 7: ln 39-45*). Additionally, Brenner uses the bet amount to form a common feature in the gambling arts known as a betting pool (*see col. 12: ln 10-53*). The betting pool is then used in part to determine the amount of a total payout made to the users/participants (*see col. 5: ln 45-61*). Furthermore, Brenner’s system implements the use of totalisators. Totalisators relay information from the various racetracks to deliver racing data to the system. This allows the system to accurately determine the one or more winning bets of the plurality of bets by determining for each of the plurality of bets if each selected participant corresponds to the winning participant for each of the first number of events selected in the bet (*see col. 5: ln 40-62*). The information provided by the totalisators also allow the system to determine the amount to be paid for a winning bet of the one or more winning bets based on the number of winnings bets, the amount of the total payout and the bet amount of the winning bet of the one or more winning bets (*see col. 12: ln 10-54*).

Claims 2-3 and 24-25, Brenner discloses a method comprising the ability to receive results of the group of events, the results identifying a winning participant for each event of the

group of events and determining one or more winning bets of the one or more bets based on the results (*ie: ability to determine which wagered made on the system were winning bets out of the various events*). Brenner also discloses the use of the information provided by the totalisators in order to determine for each of the one or more bets if the selected respective participant corresponds to the winning participant for each of the events selected in a bet (*see col. 4: ln 25-46, col. 6: ln 15-26*).

Claims 4-6 and 26-28, Brenner discloses a system that manages bets where a winning bet is flagged if each selected respective participant corresponds to the winning participant for each of the first number of events selected in the bet; or at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet of the one or more bets includes a winning participant of at least one of a specified event, at least as high as the specified amount or having specified odds (*see col. 3: ln 35-42, col. 4: ln 25-67, col. 8: ln 46-63*).

Claim 7 and 29, Brenner discloses a system wherein the processor is operable to determine an amount to be paid for each winning bet based on the number of winning bets and the amount of the total payout (*see col. 4: ln 25-57, col. 6: ln 15-30*).

Claims 8-10 and 30-32, Brenner discloses a processor that is operable to determine an amount to be paid to each winning bet based on the number of winning bets and the amount of the total payout (*see col. 4: ln 25-57*).

Claims 11, 33, and 46-47, Brenner's system can increase a payout for a first winning bet of the one or more bets if at least one of the first winning bets selected events comprises a specified event (*ie: the payout changes based on the odds concerning the specific wager in*

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*addition, and the fluctuations in order to balance the pool*) (see col. 3: ln 60-col. 4: ln 46, col. 7: ln 15-20, ln: 39-45, col. 10: ln 40-65).

Claims 12, 34, and 48, Brenner discloses a system that is able to determine the amount of a total payout based at least in part on the betting pool comprised after applying a commission rate to the betting pool (see col. 3: ln 60-67, col. 5: ln 38-53).

In regards to claim 14-17, 36-39 and 49, Brenner discloses a processor that can cancel at least one event of the group of events, receive results of the group, the results identifying a winning participant for at least one event of the group of events, and determine one or more winning bets by determining if the selected respective participants corresponds to the winning participant for the wagered bets by the player. Furthermore, Brenner discloses a system wherein the first number of events comprise horseracing events held at different tracks. Additionally, the first of number of events comprise events held on different days (see col. 6: ln 13-30, col. 7: ln 46-62, col. 10: ln 60-65, col. 12: ln 10-53).

Claim 22, 44, and 52, Brenner discloses a system wherein the processor is operable to communicate an adjustment parameter that provides a bonus to one or more bets upon satisfaction of the adjustment parameter (*ie: in order to balance the pools*) (see FIGS. 1-6, 11-14 and the related description thereof).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 18-21, 40-43, and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al. as applied to claims above, and further in view of Mindes et al. (USPN 5,842,921).**

Claims 18-21, 40-43, and 50-51 Brenner discloses a game wagering system that is capable of managing bets where a memory is operable to store one or more bets. The system allows for a user to select a first number of events selected from a group of events and a selective participant (ie: wagered winner) for each of the first number of events and a bet amount. Brenner also discloses a processor that is coupled to the bet amount to form a betting pool wherein the total payout is based at least in part on the amount in the betting pool. Although, Brenner discloses the use of this system with horse racing it lacks in disclosing other events outside of genre of horse racing (*see abstract*).

Mindes et al. discloses an analogous wagering system that accepts bets input to be placed on betting pools. Mindes discloses a system wherein a data processing system and house allows for a betting pool to be maintain by the amount of bets that have been placed into the system (*see FIGS. 1-3 and the related description thereof*). Furthermore, Mindes et al. discloses that its system may be used for various types of sporting events such as football, basketball, or baseball (*see col. 8: ln 45-67, col. 2: ln 15-61*). Mindes teaches that by applying a system that can track betting behavior by placing an odds or handicap associated with the wager can make the experience more enjoyable for the user. It is also common in the art to allow for sports wagering systems to be applied to various types of sports activities therefore it would be obvious to one of ordinary skill in the art at the time of the invention to combine the system of Brenner with the teachings of Mindes to allow for an interactive wagering system that catered to more than just

the horse-racing community.

**Claims 13 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett as applied to claims above, and further in view of Skratulia et al. (USPN 5,452,899).**

Bennett discloses a wagering game system that allows a plurality of users may participate in a betting pool on a horseracing event (*see FIGS. 1-4 and the related description thereof*). Bennett's system is able to determine an amount of a total payout to the users based in part at least on the betting pool, however lacks in disclosing a means of adding to the betting pool a carryover amount from a previous betting pool.

However, Skratulia teaches the use of a carryover amount of a general wagered pot in a wagering game wherein the leftover amount of the pot is added into the following pool. Skratulia provides the motivation for this method in a wagering game since in rare occasions the pool/pot may be distributed equally between several winners (*see col. 5: ln 45-56*). Therefore it would be obvious to one of ordinary skill at the time of the invention to combine Bennett's wagering system to include the method of distributing remaining portions of a pool to the next active pool.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Stronach (USPN 6,722,980) – Wagering System**

**Boylan, III et al. (USPN 6,712,701) – Electronic Book Interactive Wagering System.**



Any inquiry concerning this communication or earlier communication from the examiner should be direct to Ryan Hsu whose telephone number is (571)-272-7148. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M Thai can be reached at (571)-272-7147.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll-free).



RH

July 8, 2005



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**SUPERVISORY PATENT EXAMINER**  
TC3700